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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,454	11/24/2003	Edward R. Dovner	6353-106	4086
26486	7590	04/25/2006	EXAMINER	
PERKINS, SMITH & COHEN LLP ONE BEACON STREET 30TH FLOOR BOSTON, MA 02108			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 04/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,454

Applicant(s)

DOVNER ET AL.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-11 is/are rejected. 1-6 and 8-11
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

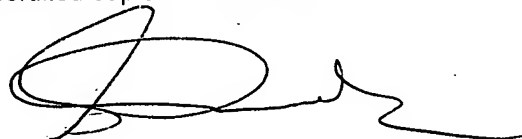
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Neumann.

Neumann discloses a device comprising: a handle having a hollow bore traversing its length and having a length having first and second diameters, defining a slight rim. Neumann also shows an elastomeric tubing extending through the hollow bore the tubing having a first segment having an outer diameter approximating the diameter of the first section of the bore and a second section approximating the diameter of the second section of the bore.

A plug having a diameter greater than a diameter of the second section of the bore, the rim preventing translation of the plug and first tube segment disposed between the plug and the first section of the bore.

Neumann discloses a device comprising: a handle having a hollow bore traversing its length and having a length having first and second diameters, defining a slight rim. Neumann also shows elastomeric tubing extending through the hollow bore the tubing having a first

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segment having an outer diameter approximately the diameter of the second section approximating the diameter of the second section of the bore.

A plug having a diameter greater than a diameter of the second section of the bore, the rim preventing translation of the plug and first tube segment disposed between the plug and the first section of the bore.

Neumann however fails to disclose his handle as a cylinder.

Solis teaches manufacturing handle members of cylinders, different diameters, plugs and elongated tubing.

Given the above teachings the examiner notes that it would have been obvious to one of ordinary skill in the art manufacture the handle means of Neumann of a cylinder as a known and common shape of handle means of exercise devices.

The examiner further notes that it desired it would have been obvious to manufacture an elastomeric tube member and cylindrical handle connection means in a mating configuration such as the mating configuration shown by Solis.

In regard to claims 2, 3, 8 and 9 the examiner notes that it well known and obvious in the art to manufacture devices such as Neumann of surgical latex tubing and that surgical latex tubing comes in various sizes which fall into the range of 1/16" and 1/4".

In regard to claims 4, 5, 10 and 11 the examiner notes that it is obvious and well known in the art to manufacture handle members of exercise devices of metal and to provide knurled areas on said handles to enhance grip.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the overall device of Jardine.

Note the mating configuration of the handle and rope member (3) of Schaber.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a trailing line.